

New England Life

RECORDATION NO. 9679-A Filed & Recorded

SEP 5 1978 - 12 00 PM

INTERSTATE COMMERCE COMMISSION

- A

NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY / 501 BOYLSTON STREET, BOSTON, MASSACHUSETTS 02117 / 617 • 266-3700

September 1, 1978

Interstate Commerce Commission
Washington, D.C.

Gentlemen:

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and two counterparts of an Agreement and Assignment dated as of August 1, 1978.

A general description of the railroad rolling stock covered by the enclosed document is set forth in Schedule 1 attached to this letter and made a part hereof.

The names and addresses of the parties are:

Manufacturer: Fullman Incorporated
(Pullman Standard Division)
200 South Michigan Avenue
Chicago, Illinois 60604

Assignee: New England Mutual Life
Insurance Company
501 Boylston Street
Boston, Massachusetts 02117

The undersigned is the Assignee mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original Agreement and Assignment to Terrence M. Walsh, Esq., Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603

Also enclosed is a check in the amount of \$10.00 covering the required recording fee.

Very truly yours,

NEW ENGLAND MUTUAL LIFE
INSURANCE COMPANY

By John F. Guthrie
Its St. Investment Officer

Handwritten signature: J. Kaplan

DESCRIPTION OF EQUIPMENT

<u>Quantity</u>	<u>Description</u>	<u>Road Mark and Number:</u>
100	100-ton covered hopper cars	FLIX 600 to FLIX 699 both inclusive

SCHEDULE 1

9679-A

RECORDATION NO. Filed & Recorded

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~~AMERICAN~~ COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of August 1, 1978

Between

PULLMAN INCORPORATED
(PULLMAN STANDARD DIVISION)

Manufacturer

and

NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY

As Assignee

(F.I. Trust No. 7)

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AGREEMENT AND ASSIGNMENT dated as of August 1, 1978 ("this Assignment") between PULLMAN INCORPORATED (PULLMAN STANDARD DIVISION) (the "Manufacturer") and NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY (the "Assignee").

W I T N E S S E T H:

WHEREAS, the Manufacturer and THE FIRST NATIONAL BANK OF CHICAGO, as Trustee (the "Vendee") under a Trust Agreement (the "Trust Agreement") dated as of August 1, 1978 with AMERICAN ROAD EQUITY CORPORATION (the "Trustor"), relating to F.I. Trust No. 7, have entered into a Conditional Sale Agreement dated as of August 1, 1978 (the "Conditional Sale Agreement"), covering the construction, sale and delivery on the conditions therein set forth by the Manufacturer and the purchase by the Vendee of the railroad equipment described in Schedule A to the Conditional Sale Agreement (collectively the "Equipment" and individually an "Item" or "Item of Equipment");

WHEREAS, the Vendee and FARMLAND INDUSTRIES, INC. (the "Lessee") have entered into an Equipment Lease dated as of August 1, 1978 (the "Lease"), providing for the lease of the Equipment to the Lessee; and

WHEREAS, the Assignee and the Lessee have entered into a Finance Agreement dated as of August 1, 1978 (the "Finance Agreement") providing for the acquisition from the Manufacturer by the Assignee of the right, title and interest of the Manufacturer under the Conditional Sale Agreement, subject to the conditions set forth below;

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

Section 1. Assignment by Manufacturer. The Manufacturer hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Manufacturer in and to each Item of Equipment to be built by it when and as delivered and accepted and upon payment by the Assignee to the Manufacturer of the amount

required to be paid under Section 5 hereof and payment by the Vendee of the amount required to be paid under Section 3.2(a) of the Conditional Sale Agreement with respect to such Item;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right and obligation to construct and deliver the various Items of Equipment to be built by it and the right to receive the payments specified in paragraph (a) of Section 3.2 thereof and reimbursement for taxes paid or incurred by the Manufacturer) and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited above in subparagraph (b) of this Section 1, all of the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement, including, without limitation, all rights to rentals and other sums assigned to the Manufacturers pursuant to Section 24 thereof;

without any recourse, however, against the Manufacturer for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify the obligations of the Manufacturer to deliver the various Items of Equipment to be built by it in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Sections 10.3, 11 and 12.5 (with respect to marking) of the Conditional Sale Agreement or relieve the Vendee from its obligations to the Manufacturer under Sections 2, 3.2(a), 10, 11 and 12 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 12 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Vendee shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this

Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

Section 2. Covenants and Agreements of Manufacturer.

The Manufacturer covenants and agrees that it will construct and deliver the various Items of Equipment to be built by it to the Vendee, in accordance with the provisions of the Conditional Sale Agreement, and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each Item of Equipment to be built by it to the Vendee under the Conditional Sale Agreement it had legal title to such Item and good and lawful right to sell such Item and the title to such Item was free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease (as defined in the Conditional Sale Agreement); and the Manufacturer further covenants and agrees that it will defend the title to such Item built by it against the demands of all persons whomsoever based on claims originating prior to said delivery of such Item by the Manufacturer to the Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder and the Lessee under the Lease.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, the Conditional Sale Indebtedness or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Vendee arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Sections 10 and 11 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Manufacturer. The Manufacturer's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Section 12.4 of the

Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted by the Vendee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Manufacturer of the asserted defense, set-off, counterclaim or recoupment and the Assignee's giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment. Any and all such obligations shall be and remain enforceable by the Vendee against and only against the Manufacturer and shall not be enforceable against the Assignee or any party or parties in whom security title to the Equipment or any Item thereof or any of the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments. The Assignee will give notice to the Manufacturer of any suit, proceeding or action by the Assignee herein described.

Except in cases of designs, systems, processes, formulas or combinations specified by the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including reasonable royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any Item thereof, of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give notice to the Manufacturer of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such claim.

The Manufacturer agrees that any amount payable to it by the Vendee or the Lessee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any Items of Equipment.

Section 3. Equipment Markings. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously

marked by a plate or stencil in contrasting colors on each side of each Item of Equipment, at the time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

"Leased from THE FIRST NATIONAL BANK OF CHICAGO, as Trustee, and subject to a Security Interest recorded with the I.C.C."

Section 4. Recordation. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute and deliver all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

Section 5. Conditions Precedent to Payment By Assignee. The Assignee, on or before noon on the Closing Date fixed as provided in Section 3.5 of the Conditional Sale Agreement, shall pay to the Manufacturer at the office of the Vendee at One First National Plaza, Chicago, Illinois 60670, Attention: Corporate Trust Division, an amount equal to that portion of the Purchase Price (as defined in Section 3.1 of the Conditional Sale Agreement) of the Equipment not required to be paid pursuant to subparagraph (a) of Section 3.2 of the Conditional Sale Agreement, provided that (i) the Trustor shall have advanced to the Vendee an amount equal to that portion of the Purchase Price of the Equipment required to be paid pursuant to Section 3.2(a) of the Conditional Sale Agreement, and (ii) there shall have been delivered to the Assignee the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to special counsel for the Assignee:

(a) Bill or Bills of Sale from the Manufacturer to the Assignee, transferring to the Assignee security title to the Equipment and warranting to the Assignee and to the Vendee that at the time of delivery to the Vendee under the Conditional Sale Agreement the Manufacturer had legal title to the Equipment and good and lawful right to sell the Equipment, and title to the Equipment was free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(b) Certificate or Certificates of Acceptance signed by an inspector or other authorized representative of the Lessee stating that the Equipment has been inspected and accepted by him on behalf of the Lessee and further

stating that there was plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each Item of Equipment at the time of its acceptance, in letters not less than one inch in height, the following legend:

"Leased from THE FIRST NATIONAL BANK OF CHICAGO, as Trustee and subject to a Security Interest recorded with the I.C.C.";

(c) Invoices for the Equipment accompanied by or having endorsed thereon a certification by the Lessee as to the correctness of the prices of such Items as set forth in said invoices; and

(d) Opinion of counsel for the Manufacturer, addressed to the Vendee, the Trustor and the Assignee, dated as of such Closing Date, to the effect that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement and this Assignment have each been duly authorized, executed and delivered by the Manufacturer and, assuming the due authorization, execution and delivery thereof by each other party thereto, are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their respective terms, subject to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally; (iii) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, and (iv) security title to the Equipment is validly vested in the Assignee at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, free of all claims, liens and encumbrances, except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease.

It is understood and agreed that the Assignee shall not make any payment with respect to any Items of Equipment excluded from the Conditional Sale Agreement pursuant to Section 2.3 and 3.1 thereof. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all rights, security title and interest of the Assignee in and to such Items of Equipment with respect to which payment has not been made by the Assignee.

Section 6. Further Assignments. Subject to the terms and provisions of the Finance Agreement, the Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

Section 7. Representation of Manufacturer; Further Assurances. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the other parties thereto) it is a valid and existing agreement binding upon the Manufacturer and the other parties thereto, and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, security titles and interests hereby assigned and transferred to the Assignee or intended so to be.

Section 8. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

Section 9. Execution in Counterparts. This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Vendee.

Although this Agreement is dated as of the date first above written for convenience, the actual date or dates of execution hereof are respectively the date or dates of acknowledgment set forth below, and this Agreement shall be effective on the latest of such dates.

IN WITNESS WHEREOF, the Manufacturer and the Assignee have caused these presents to be executed in their respective corporate names by officers or representatives duly authorized, and their respective corporate seals to be affixed and duly attested.

PULLMAN INCORPORATED
(PULLMAN STANDARD DIVISION)

By B. R. Beers
Its Vice President ~~Freight Unit~~

[Corporate Seal]

Attest:

William O. O'Neil
Assistant Secretary

NEW ENGLAND MUTUAL LIFE
INSURANCE COMPANY

By John F. Guthrie
Its Sr. Investment Officer

[Corporate Seal]

Attest:

Edward N. Wadsworth
Assistant Secretary

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this *31st* day of *August*, 1978, before me personally appeared *B. Q. Beers* to me personally known, who, being by me duly sworn, says that he is a Vice President ~~Freight Unit~~ of PULLMAN INCORPORATED (PULLMAN STANDARD DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Christine Shier

Notary Public

My Commission Expires: *9/3/79*

COMMONWEALTH OF MASSACHUSETTS)
) SS.
COUNTY OF SUFFOLK)

On this *first* day of *September*, 1978, before me personally appeared *John F. Cottrick, Jr* to me personally known, who, being by me duly sworn, says that he is Sr. Investment Officer of NEW ENGLAND MUTUAL LIFE INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Susan L. Deering

Notary Public

My Commission Expires:

Susan L. Deering
Notary Public
Commonwealth of Massachusetts
My Commission Expires March 7, 1980